In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 422

UNITED STATES OF AMERICA ET AL., APPELLANTS

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

STATEMENT AS TO JURISDICTION ON APPEAL

In compliance with Rule 12 of the Rules of the Supreme Court, appellants submit herewith their statement showing the basis of the jurisdiction of the Supreme Court of the above-entitled case on appeal.

STATUTES

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U.S.C. Sup. VI, Tit. 28, Sec. 45a).

Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4); U.S.C., Tit. 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U.S.C., Tit. 28, Secs. 45 and 47a, Sup. VI).

DECREE

The decree sought to be reviewed was entered June 26, 1933.

The petition for appeal was filed and the order allowing the appeal was entered August 9, 1933.

THE NATURE OF THE CASE AND RULINGS BELOW

This suit was brought by 31 railroads to enjoin, set aside, and annul an order of the Interstate Commerce Commission, made and entered December 10, 1931, in a proceeding entitled Ex Parte No. 102, *Application of American Barge Line Company,* 190 I.C.C. 177.

This proceeding before the Commission was initiated by the American Barge Line Company to secure an order, pursuant to the provisions of Section 3 (e) of the Inland Waterways Corporation Act, as amended May 29, 1928, by the so-called Denison Act (U.S.C. Sup. VI, Tit. 49, c. 5, Sec. 153 (e)), requiring certain common carriers by railroad, including the appellees herein, to join with the Barge Line Company in establishing joint rates on cotton over through routes previously established from certain Arkansas points and Memphis, Tennessee, to eastern territory and southern New England.

Upon consideration of this application and of representations and protests against establishment of the rates sought and request for hearings, the Commission made and issued its order as aforesaid.

By bill of complaint filed February 2, 1933, the appellees asserted that the construction placed upon the so-called Denison Act by the Commission; that is, that orders my be made thereunder without affording a hearing upon the necessity and advisability of establishing through routes and joint rates in connection with barge lines, was erroneous; but that, if correct, then the Act was unconstitutional, being violative of the Fifth Amendment in taking their property without due process of law and, further, that it also constituted an unlawful delegation of power to the Commission contrary to Article I of the Constitution.

Hearing was had before a statutory court of three judges. Findings of fact and conclusions of law were made and opinions rendered, the majority holding the Act to be unconstitutional and the Commission's order therefore invalid. A final decree was entered permanently annulling, enjoining, and setting aside the Commission's order.

CASES SUSTAINING JURISDICTION

United States v. *Erie Railroad Co.*, 280 U.S. 98.

United States v. *Baltimore & Ohio R.R. Co.*, 284 U.S. 195.

I.C.C. v. *Oregon-Washington R. Co.*, 288 U.S. 14.

United States v. *Northern Pacific Ry.*, 288 U.S. 490.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

ELMER B. COLLINS,
Solicitor for the United States.

H. L. UNDERWOOD,
Solicitor for Interstate Commerce Commission.

CLARK C. WREN,
Solicitor for Inland Waterways Corporation.

JOHN J. ESCH;
A. K. SHIPE,
Solicitors for American Barge Line Company, Mississippi Valley Barge Line Company, The Mississippi Valley Association.

U. S. GOVERNMENT PRINTING OFFICE: 1939